

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

HENRY FLOYD LOVE, JR.,)
vs.)
Petitioner,)
vs.) Case No. CIV-05-545-M
STATE OF OKLAHOMA, *et al.*,)
Respondent.)

ORDER

On May 27, 2005, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation [docket no. 5] in this federal habeas action brought pursuant to 28 U.S.C. § 2254. Magistrate Judge Bacharach recommends that Petitioner's Petition for Writ of Habeas Corpus be summarily dismissed without prejudice. In addition, he recommends that Petitioner be permitted to re-file his action under the appropriate statute, which in this case would appear to be 42 U.S.C. § 1983. The parties were advised of their right to object to the Report and Recommendation by June 16, 2005. Petitioner timely filed an objection.

The Court has carefully reviewed this matter de novo. The Court agrees with Magistrate Judge Bacharach's Report and Recommendation in all respects. Accordingly, the Court hereby:

- (1) ADOPTS the Report and Recommendation issued by Magistrate Judge Bacharach on May 27, 2005;
- (2) DISMISSES Petitioner's Petition for Writ of Habeas Corpus [docket no. 1] without prejudice for the reasons stated in the Report and Recommendation; and

(3) GRANTS Petitioner leave to re-file his claims pursuant to 42 U.S.C. § 1983 within twenty (20) days from the date of this order.*

IT IS SO ORDERED this 22nd day of June, 2005.



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE

* In accordance with 28 U.S.C. § 1914(a), Petitioner, should he choose to re-file his claims under § 1983, will be responsible for a \$250.00 filing fee, the filing fee for non-habeas actions.